UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

GENERAL DYNAMICS INFORMATION TECHNOLOGY,[1]

Employer

and Case 21-RC-20905

INTERNATIONAL ASSOCIATION OF MACHINIST AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 725,[2]

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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[1] The name of the Employer appears as stipulated at the hearing.
[2] The name of the Petitioner appears as stipulated at the hearing.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and seeks to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time hourly Mechanical Technicians, Sheet Metal Fabricators, Electricians, Laborers, Painters, Machinists, and Supply Technicians employed by the Employer, performing work on the repair and maintenance contract at Naval Air Station North Island, San Diego, California; excluding all other employees, Admin/Data Analyst employees, office clerical employees, guards and supervisors, as defined in the Act.[3]

ISSUES AND CONCLUSIONS

The only issue presented is whether the Employer and the United States Navy are joint employers of the proposed bargaining-unit employees. The Employer contends that it and the

[3] The unit description is consistent with the parties' stipulation.

U.S. Navy are joint employers and therefore the Regional Director cannot certify the bargaining unit without the consent of the U.S. Navy to bargain with the Employer in a multiemployer bargaining unit. The Petitioner contends that the Employer and the Navy are not joint employers under the Act. The Navy did not make an appearance at the hearing on this matter, and only the Employer filed a post-hearing brief.

Based on the record in this case and the considerations noted below, it is concluded that it is irrelevant under Board law whether the Employer and U.S. Navy are joint employers under the Act.

FACTS AND ANALYSIS

A. The Employers' Operations

The Employer, a subsidiary of General Dynamics Corporation, a Delaware corporation, with principal offices located at 2941 Fairview Park Drive, Suite 100, Falls Church, Virginia, and operations located at Naval Air Station, North Island, San Diego, California, is engaged in the maintenance, repair, modification, and overhaul of various aircraft for the U.S. Navy.

The Employer, previously known as Anteon Corporation, was taken over by General Dynamics Corporation in about June 2006, and renamed as General Dynamics Information Technology. The Employer performs the same kind of work at

present as it did before the takeover by General Dynamics Corporation.

B. Employer Status

1. Facts Regarding Employer Status

The record reveals that the Employer is under contract with the Navy to repair and modify various aircraft for the Navy. The Employer directly hires its own employees who work side-by-side with employees of the Navy who perform the same kind of work at the same location. The record discloses that the Navy at times suggests specific persons for the Employer to hire. The Employer does not claim that all employees that it hires are referred by the Navy, and also does not claim that that it only hires employees who are referred by the Navy. The record further discloses that the Navy sometimes suggests specific persons for promotion, layoff, and termination. The Employer does not claim that it only promotes, lays off, or terminates those employees who are specifically named by the Navy.

The Employer is not allowed to have its personnel working on aircraft without any of the government's employees present at the same time. Thus, the Navy controls the times that the Employer's employees are allowed to be present to work on aircraft. Breaks and lunch breaks are under the control of the Navy supervisors. Supervisors employed by the Navy assign work to various crews of employees. Crew leaders employed by the

Employer supervise crews who are employees of the Employer. The Employer's crew leaders in turn report to the Navy's supervisors. The Navy has its own crews of employees that it supervises.

The highest level on-site managers in charge of work on the aircrafts at the job site are Navy employees. The Employer's two main on-site supervisors are Freddy Quiros and John Funke. Guillermo Bognot is Quiros' assistant supervisor and Gerardo Castillo is John Funke's assistant supervisor.[4]

The Employer made an offer of proof at the hearing on additional evidence of joint employer status. The offer of proof was received by the Hearing Officer. From the transcript, the Employer's offer of proof is as follows:

> So we believe that, because of the basis for the Oakwood decision, that the evidence that we've offered and would continue to offer, if permitted by the hearing officer, including testimony of employees as to who they view their supervisors are, General Dynamics employees, who would testify that they look to government supervisors as their supervisor, testimony about the government issuing these people employee ID numbers, testimony about them clocking in using government computers, testimony about the direction of their work, control of their day-to-day work, that type of evidence is what we would continue to offer if permitted to do so by the court.

The Employer admits that it is an Employer within the meaning of Section 2(2) of the Act and is subject to the National Labor Relations Board's jurisdiction. However, as noted earlier, the Employer contends that because it is a joint employer with

[4] The parties stipulated that Guillermo Bognot and Gerardo Castillo are supervisors within the meaning of Section 2(11) of the Act and are therefore excluded from the appropriate bargaining unit.

the Navy, the Regional Director cannot certify the proposed bargaining unit without the consent of the Navy to bargain with the Employer over what the Employer considers as a multiemployer unit.

2. Board Standards, Analysis and Conclusion Regarding Employer Status

The Board, in Management Training Corporation, 317 NLRB 1355 (1995), held that when reviewing jurisdictional issues in cases involving employers who are parties to contracts with exempted government agencies, it will only consider whether the employer meets (1) the statutory definition of employer in Section 2(2) of the Act and (2) the applicable monetary jurisdictional standards. The issue of joint employer status with a government agency is not considered and does not bar the certification of a bargaining unit of such an employer, regardless of whether the employer may have a joint employer relationship with a government agency.

The Employer has stipulated that it is an employer within the meaning of Section 2(2) of the Act and that it falls within the Board's monetary jurisdictional standards. Thus, under Management Training Corp., 317 NLRB 1355, the Regional Director need not consider whether the Employer is a joint employer with the Navy and can certify the proposed bargaining unit without the Navy being named as a joint employer.

The Employer acknowledges that Management Training Corp., supra, applies to the present case but argues that it should be overturned. The Employer argues that the Board should instead follow precedent in which joint employer relationship was a relevant consideration.

The Employer cites cases in which a joint employer relationship was relevant in deciding whether the Board could assert jurisdiction over a bargaining unit that is jointly employed. National Labor Relations Board v. Browning-Ferris Industries of Pennsylvania, Inc., 691 F.2d 1117 (3rd Cir. 1982); Airborne Freight Co., 338 NLRB 597 (2002); Cabot Corp., 223 NLRB 1388 (1976); Laerco Transportation, 269 NLRB 324 (1984); Oakwood Care Center, 343 NLRB No. 76 (2004); General Counsel Memorandum re Elliot Turbomachinery Co. and F.S.-Elliot Co., Case 6-CA-34240, 2005 WL 936628 (N.L.R.B.G.C. April 1, 2005). All of the cases cited by the Employer above do not deal with a situation where an alleged employer is a government agency or entity such as in the present case. On the other hand, Management Training Corp., supra, has been affirmed by the Board. See Adult Residential Care, Inc., 344 NLRB No. 101 (2005); Jacksonville Urban League, Inc., 340 NLRB 1303 (2003).

As the Board stated in Management Training Corp., 317 NLRB 1355, there are issues in which the employer that contracts with a government agency could bargain about even if the government agency is not deemed a joint employer and has no

involvement in bargaining with the union:

> [I]t is unrealistic to characterize such topics as disciplinary procedure, including arbitration; strike provisions; management-rights clauses, and employee promotions, evaluations, and transfers as unimportant to the bargaining process. They are matters which have traditionally been fought over by both parties during contract negotiations. To treat them as inconsequential demeans the very bargaining process we are entrusted to protect. Id. at 1355.

The Board further stated that simply because an "employer's ability to respond to union demands was restricted by its contract with the exempt entity . . . does not mean that bargaining is meaningless; there are, after all, proposals to be drafted – if not in the extant contract, then in future ones – as well as other matters to be negotiated which do not require contractual approval [by the government]." Id.

The Employer here does not claim and has produced no evidence that it completely lacks control over all terms and conditions of employment over its employees. Thus, the Employer is obligated to bargain with the Union over those terms and conditions of employment to the extent that it has control and to the extent that it is not limited by contractual obligations to the Navy, in a manner consistent with Management Training Corp., 317 NLRB 1355.

The Employer attempts to distinguish the present case from Management Training Corp., supra, by arguing that in that case, the employer denied the Board's jurisdiction whereas the Employer here does not deny the Board's jurisdiction. This

argument does not change the outcome. In the present case, by arguing that it is a joint employer with the Navy, the Employer is in essence arguing that the Board has no jurisdiction because the Board cannot assert jurisdiction over a government entity. Thus, the Employer's argument is inconsistent – that it is subject to the Board's jurisdiction, but at the same time, it argues it is not subject to the Board's jurisdiction. This argument is contrary to the Board's holding in Management Training Corp., supra.

As a secondary argument, the Employer argues that the petition for election fails on its face because the Union failed to name the Navy as a joint employer on the petition. Because it is determined herein that the issue of whether the Navy is a joint employer is irrelevant under current Board law, the Employer's secondary argument need not be considered. Airborne Freight Co., 338 NLRB 597, 597 n. 1.

There are approximately 273 employees in the unit found to be appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are

employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **INTERNATIONAL ASSOCIATION OF MACHINIST AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 725.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before **July 28, 2006.** No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior

to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **5 p.m., EST, on August 4, 2006.** This request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also

be found under “E-Gov” on the National Labor Relations Board website: **www.nlrb.gov.**

DATED at Los Angeles, California, this **21st** day of July 2006.

/s/[Victoria E. Aguayo]
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board